

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

CIVIL NO. 1:19-cv-00149

MARCUS MITCHELL,

Plaintiff,

vs.

MORTON COUNTY SHERIFF KYLE
KIRCHMEIER, MORTON COUNTY, CITY
OF BISMARCK, MORTON COUNTY
SHERIFF'S DEPUTY GEORGE PIEHL,
BISMARCK POLICE OFFICER TYLER
WELK, NORTH DAKOTA HIGHWAY
PATROL SERGEANT BENJAMIN
KENNELLY, and JOHN DOES 1-2,

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF CITY AND COUNTY
DEFENDANTS' RULE 60(A) MOTION
TO CORRECT MISTAKE IN ORDER
GRANTING CITY AND COUNTY
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DEFENDANT KENNELLY'S MOTION
FOR SUMMARY JUDGMENT**

Defendants Morton County Sheriff Kyle Kirchmeier, Morton County, City of Bismarck, Morton County Sheriff's Deputy George Piehl, and Bismarck Police Officer Tyer Welk (hereinafter collectively "City and County Defendants") submit this memorandum of law in support of *City and County Defendants' Rule 60(a) Motion to Correct Mistake in the Order Granting City and County Defendant's Motion for Summary Judgment and Defendant Kennelly's Motion for Summary Judgment*, filed herewith. City and County Defendants request a mistake contained in the Court's *Order Granting City and County Defendant's Motion for Summary Judgment and Defendant Kennelly's Motion for Summary Judgment*, filed July 30, 2024 (doc. 129) be corrected.

Rule 60(a) of the Federal Rules of Civil Procedure provides as follows:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever

on e is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

Fed. R. Civ. P. 60(a) (bold in original). There appear to be two mistakes in paragraph 33 of the Order.

Specifically, the first sentence in paragraph 32 of the Order appears to be missing the word "not" where the Order currently reads as follows: "The City and County Defendants and Sergeant Kennelly argue Officer Welk and Deputy Piehl are entitled to summary judgment under qualified immunity because they did use excessive force in effecting the arrest of Mitchell" City and County Defendants request this sentence be corrected to read ". . . because they did not use excessive force in effecting the arrest of Mitchell"

For the foregoing reasons, City and County Defendants request the Court correct the Order to address the mistake identified above.

Dated this 31st day of July, 2024.

BAKKE GRINOLDS WIEDERHOLT

By: /s/ Shawn A. Grinolds
Randall J. Bakke (#03898)
Shawn A. Grinolds (#05407)
Bradley N. Wiederholt (#06354)
Grant T. Bakke (#09106)
Special Assistant State's Attorneys for
Morton County
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247
(701) 751-8188
rbakke@bgwattorneys.com
sgrinolds@bgwattorneys.com
bwiederholt@bgwattorneys.com
gbakke@bgwattorneys.com

Attorneys for Defendants Morton County
Sheriff Kyle Kirchmeier, Morton County,
City of Bismarck, Morton County Sheriff's
Deputy George Piehl, and Bismarck Police
Officer Tyler Welk

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2024, a true and correct copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF CITY AND COUNTY DEFENDANTS' RULE 60(A) MOTION TO CORRECT MISTAKE IN ORDER GRANTING CITY AND COUNTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT KENNELLY'S MOTION FOR SUMMARY JUDGMENT** was filed electronically with the Clerk of Court through ECF.

ATTORNEYS FOR PLAINTIFF:

Shelia A. Bedi
Vanessa del Valle
Roderick and Solange MacArthur Justice Center
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-1271
Sheila.bedi@law.northwestern.edu
vanessa.delvalle@law.northwestern.edu

Lawrence Edward Chacon
Lawrence E. Chacon Attorney At Law
826 5th St. NW
Albuquerque, NM 87102
(505) 243-0098
lawchacon@comcast.com

Shubra Ohri
Roderick & Solange MacArthur Justice Center
906 Olive St., Suite 420
Saint Louis, MO 63101
(314) 254-8410
Shubra.ohri@macarthujustice.org

ATTORNEY FOR DEFENDANT NORTH DAKOTA HIGHWAY PATROL SERGEANT BENJAMIN KENNELLY:

Courtney Titus
Assistant Attorney General

Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
(701) 328-3640
ctitus@nd.gov

Jane G. Sportiello
Assistant Attorney General
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
(701) 328-3640
jsportiello@nd.gov

By: /s/ Shawn A. Grinolds
Shawn A. Grinolds